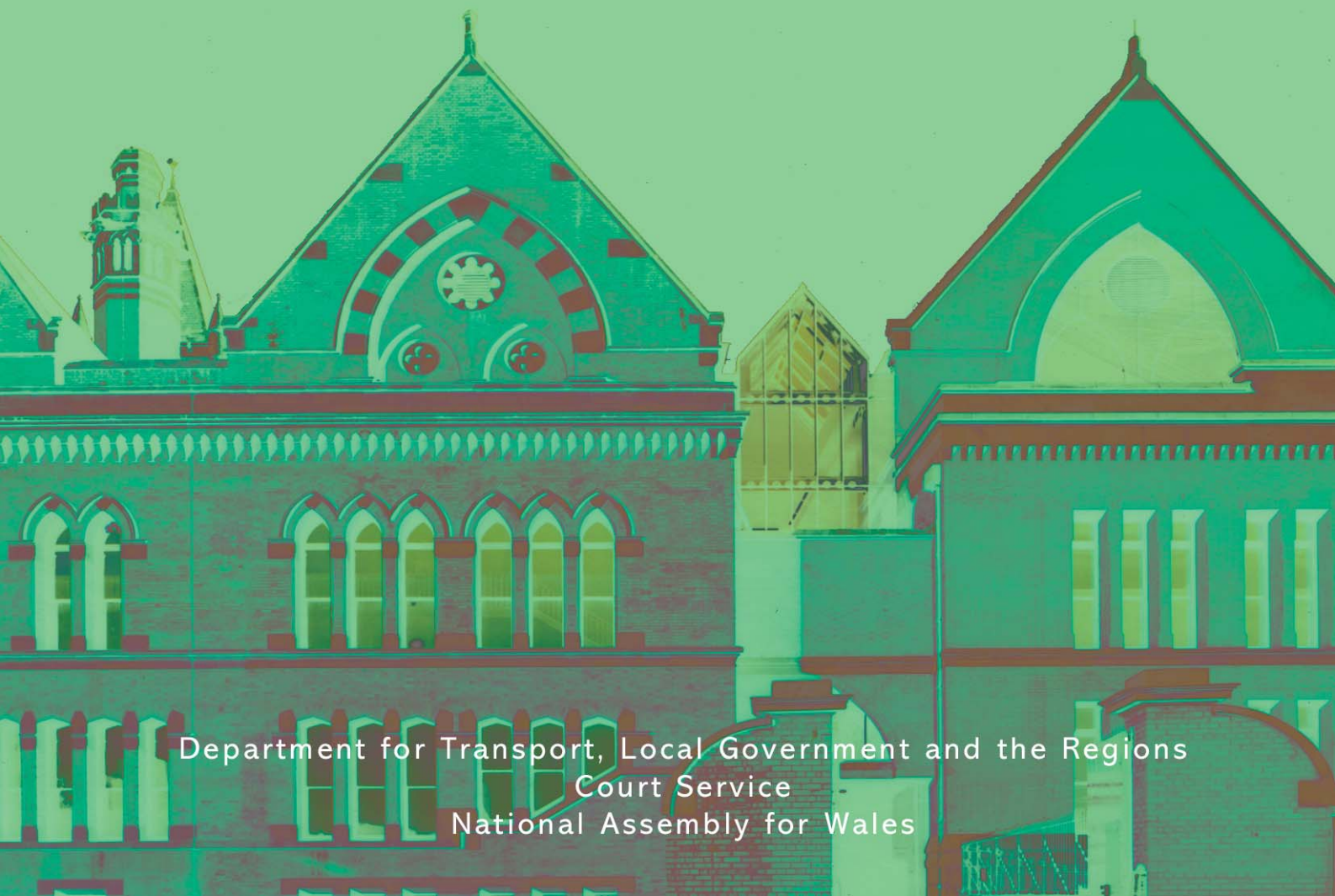
Getting the best out of the court system

Information for local authorities and other social landlords

Claims for possession



Department for Transport, Local Government and the Regions
Court Service
National Assembly for Wales

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Claims for possession

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Contents

Introduction

The following notes provide you with information about the handling of possession cases in the High Court or a county court. They are intended to be of general use in handling straightforward claims for possession and of particular use in urgent cases involving anti-social behaviour or trespassers. The notes do not claim to be fully comprehensive: **they are no substitute for the relevant rules and practice directions themselves.** They do, however, highlight the procedures you should use, or might consider using, to get the best out of your local court.

Using the guidance

The guidance begins with a quick reference list of steps you might want to consider taking during the course of a claim where obtaining possession quickly is particularly important or where your tenants, officials, witnesses, or others are being put at risk. The guidance notes following the quick reference list give detailed information about the procedures, the possession process as a whole, including relevant forms, information leaflets and time limits, and explains the role that court staff play in processing your claims.

Liaison with courts

Knowledge of court procedures and powers and the way court staff handle possession proceedings are obviously useful. **But establishing regular contact with your local court is even more important.**

Your initial contact should be with the court manager who may refer you to, for example, the person in charge of the issue section, or the listing officer. The court will welcome knowing in advance how many claims you will be issuing and when, since this will allow them to make arrangements to deal with the work on its arrival. It will also help you. Staff will normally be able to tell you the hearing date you will be given if your claims are issued on a certain date. This in turn will allow you to calculate arrears up to the issue date, and enable you to insert the hearing date and time on the face of the claim form, again saving the court time and enabling your claims to proceed to service more quickly. It may also be possible to agree specific administrative arrangements for the handling of your cases, for example, a guaranteed turnaround on issue which is less than the normal target of 5 working days, in return for your preparing some additional documentation such as the defence form. This is something you can discuss with the court manager.

Court User Groups

The court will also be able to give you details of its Court User Group. Normally the group meets once or twice a year and you may find it helpful to join. User Groups provide a forum for discussing new legislation, enable you to raise issues such as court practices and facilities, and allow you to seek clarification from a judge about practice and procedure.

Hearing dates

The availability of early hearing dates is a matter of frequent concern. The court knowing your regular requirements will help. You must bear in mind, however, that listing is a judicial function. It is the judge who ultimately decides which cases should be given priority, not the court manager, nor the listing officer. Nonetheless, court staff will always make whatever efforts they can to ensure your urgent work is treated as such. Advance warning of any urgent work, by telephone,

will help the court meet your needs. For example, let the court know of your intention to file an application for an injunction as soon as you know you will be making one. Tell the court at what time you expect to issue the application. **Do not wait until all the paperwork is ready** for issue and then take it to the court, expecting court staff to be able to find a judge immediately. Prior notice will allow court staff time to find another judge if one is not available at their court, or to arrange for a deputy to release a suitable judge at your local court who can deal with your application. In the latter case this will be to your benefit since you will be saved the expense of a journey to another court.

Courts do provide an out-of-hours scheme for dealing with urgent injunctions and related matters. Your local court manager will be able to supply you with details.

With regard to listing more generally you should bear in mind that court managers do not have sole control over the judicial resources allocated to them. If they require more than they are allocated, they will have to make a case to their group manager. This will be balanced against requests from other courts. Where a request for additional allocation is made, it is important that court mangers can back their request with detailed information about future workload and whether it will be a sustained, or temporary, need. It is, therefore, in your interest to provide the court manager with as much information about the number of cases you intend to issue on a regular basis and, especially, for example, if you are intending any particular initiative to clear arrears that may mean you will be issuing more claims at any one time than you normally would.

Anti-social behaviour and health and safety issues

An area where liaison with the court is especially crucial is where you are issuing proceedings containing allegations of anti-social behaviour or where there has otherwise been actual or threatened assault by one or more defendant. You should be aware that court staff, and particularly bailiffs, **do not have any powers of restraint** where a party becomes, or threatens, violence. If court staff fear a breach of the peace, are threatened with, or encounter, actual violence, they will normally have to enlist the help of the police, like any other ordinary citizen. Police may be available where the court is also a combined court centre, but many courts are not. In these courts particularly, staff will need to make contingency arrangements if violence is expected. Any **information you can provide** about the potentially violent person, **will be vital** in enabling staff to get the help they need to protect your representatives, themselves, the judge and other people at the court.

For example, you should indicate on the claim form where the particulars contain an allegation of assault or threatened assault. A reasonable time before any hearing, you should let the court have as much information about the violent, or potentially violent, person as possible, for example: whether they are

- suffering from any form of mental illness;
- known to the police, or have a criminal record of violence;
- likely to offer violence to any particular party who might be attending the hearing, such as a witness;
- known to have any firearms or other offensive weapons; or
- likely to attend the hearing with or without some of their supporters.

Similar information **should always be provided** where injunctions are granted which lead to the issue of a warrant of arrest or committal, or where the claim leads to an eviction.

Quick Reference List

Pre-issue

You can apply to the court for an injunction to protect people or property before issuing proceedings for possession. You can also apply for interim injunctions while a possession claim is proceeding. Either can be dealt with without notice, that is, without telling the party, or parties, against whom the injunction is being sought. Applications must be supported by evidence, and where made without notice, an explanation of why this is necessary.

Issue and service

You may be able to reduce the overall period between issue and the hearing by:

- opting to serve the claim form personally yourself rather than waiting for the court to serve the claim by post;
- by applying for the period between service and hearing to be 'abridged' (shortened); and
- at the same time, applying for an earlier (an 'expedited') hearing.

Hearings

Never simply arrive at the court to issue anything urgent. You should maintain regular contact with the court manager or listing officer about your needs, urgent or not. Give advance warning by telephone as soon as you know you will be issuing proceedings with brief details about the nature of them and the reason for urgency.

Witnesses

Witness evidence at a possession hearing may be given in writing without the witness attending. However, if the maker of the witness statement does not attend the hearing and the other party disputes material evidence, the court will normally adjourn the hearing so that oral evidence can be given. Where the claim is allocated to the fast or multi-track, or the court has ordered it, witnesses must attend.

If your witnesses are to attend court, consider whether they need protection. If you give the court notice, staff can arrange for them to wait separately from other parties to the claim before the hearing starts and can also arrange for them to leave the court separately. **Remember that witness harassment or intimidation is now a criminal offence in civil proceedings under the Criminal Justice and Police Act 2001.**

Reassure your witnesses by letting them know what they can expect to happen at court. An information leaflet about being a witness is available from the county court.

Consider whether to use professional witnesses, such as public environmental health officers, rather than other tenants who may be subject to harassment.

Evidence

Consider the use of tape recordings as part of your evidence, for example of telephone conversations or noise nuisance; video recordings from surveillance cameras; or photographs.

Enforcement

In cases of extreme urgency, you may be able to contact the bailiffs to discuss an eviction date before issuing a warrant of possession.

If there are violent occupants at the property, you must warn the bailiffs as soon as possible. They will then be able to take early steps to arrange additional bailiff or police help.

Notes for Guidance

1. Issue of a claim for possession (against tenants or trespassers)

A claim for possession is a claim for the recovery of possession of land, including buildings or parts of buildings. Rules and procedures relating to possession claims are contained in Part 55 of the Civil Procedure Rules (CPR) and its accompanying practice direction).

The procedure set out in Section 1 of Part 55 applies to claims for possession brought:

- by landlords or former landlords;
- by mortgagees; or
- by licensors or former licensors; or
- against trespassers; and
- should be used where a tenant is seeking relief from forfeiture.

They are fixed date claims; that is, the court will fix a date for hearing when it issues the claim (Rule 55.5(1)).

Contact the court before issuing your claims and particularly if you are seeking an injunction, have an urgent claim against trespasses or a possession claim involving anti-social tenants where you will be seeking to abridge service and expedite the hearing (see procedure below). Make sure you pass on any information you have if there is any possibility of violence, or threat of violence. ***If this is information you cannot include in your particulars of claim, please include it in a covering letter, suitably highlighted.*** *Prior contact will benefit both you and the court, particularly in cases involving anti-social tenants. Tell the court how many claims you propose to issue and when. Court staff will normally be able to tell you the date on which your claims will be heard. In cases involving rent arrears, this allows you to calculate the arrears up to the date of issue. It also forewarns the court of expected workload and allows them to make contingency arrangements, if necessary, to ensure that your claims are issued without delay.*

Requirements

For claims for possession based on grounds of arrears of rent and other breaches of tenancy agreements and claims against trespassers you will require:

Form N5 possession claim form

Where you are issuing a claim against trespassers and some, or all, of the defendants names are not known, you must issue the claim against 'persons unknown' either with or without the names that are known, as is appropriate. (Rule 55.3(4))

Form N119 particulars of claim (if one of the grounds for possession is arrears of rent and you are claiming possession of residential premises). (**Form N119A** Notes for guidance to help claimants complete **Form N119** are available from the court.) Where the grounds do not include arrears of rent, or you are not claiming possession of residential premises, you must produce your own particulars of claim, providing all the detail required by the practice direction to CPR Part 55;

OR

Form N121 particulars of claim if the claim is against trespassers. (But see also note below concerning service of any additional evidence.)

Provide sufficient copies of the claim form and particulars of claim to allow one copy for yourself, one for the court, one for each defendant, and where applicable, one for any representatives of any other interested parties (e.g. underlessees). Additional copies may be required where the claim is against trespassers whose names are unknown (see below).

The court fee

A leaflet 'County Court Fees' is available as a quick reference. Ask the court for a copy. Copies are updated to meet any changes in the Fees Orders.

A request that the papers be returned to you for personal service, if you wish to serve the claim on the defendant yourself.

If your claim is against trespassers, you must file any supporting evidence, for example, witness statements, with sufficient copies for service, when you file your claim form

Bailiff service of claims is not available in the High Court and only in one particular circumstance in the county courts. Where your claim is against trespassers and the defendants' names are not known, that is, the claim is issued against 'persons unknown', you may make a written request that the county court bailiff serve the defendants. No fee is payable. The bailiff may serve the documents by:

- attaching copies of the claim form, particulars of claim and any supporting evidence to the main door or some other part of the land so that they are clearly visible; and
- if practical, by inserting copies of those document in a sealed, transparent envelope addressed to 'the occupiers' through the letter box; or
- by placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to the occupiers.

Where such a request is, made you must provide the necessary plastic envelopes and stakes. (Rule 55.6)

Checks

Before submitting your claim to the court you should check that:

- the claim form and particulars of claim are in the right form, are fully and correctly completed, and the statement of truth on both is signed. Make sure you have indicated the type of claim by ticking the appropriate box on the reverse of the claim form;
- if the claim is against trespassers, that you have filed any witness statements that support your claim;
- you are issuing in the right court; that is, the county court for the district in which the property is situated (Rule 55.3(1));
- you are submitting the correct fee (fees change from time to time; you should check that you have the current fees order or leaflet);
- the correct solicitor's costs, if any, are being claimed (Schedule 2 of Civil Procedure Rules, County Court Rules Order 38, rule 18, Appendix B).

> You may, exceptionally, issue the proceedings in the High Court. Exceptional circumstances would be if there are complicated disputes of fact, or there are points of law of general importance, or the **claim is against trespassers** and there is a substantial risk of public disturbance or of serious harm to persons, or property, which properly require immediate determination. The value of the property and the amount of any financial claim may be relevant circumstances but these factors alone will not normally justify starting a claim in the High Court. A claim started in the High Court must be accompanied by a certificate setting out the reasons for doing so. The certificate must contain a statement of truth.
>
> If the court decides that a claim has been started in the High Court inappropriately, the court will either strike out the claim, or order its transfer to a county court and disallow the costs of issue and transfer.

If you are issuing in the High Court, that you have included a certificate giving your reasons for doing so supported by a statement of truth - there is no standard form for this.

(See also under 'Additional information' below for interim applications at the time of issue)

Court procedures

The court will:

- prepare **Form N206B** Notice of issue, which tells you the claim number and hearing date, or endorse this information on any schedule of claims you provide;
- endorse the claim number and hearing date on all copies of the claim form and particulars of claim and seal them (if you have not already done so);
- prepare a claim form and particulars of claim for service on the defendant, adding to them a defence form (**Form N11R** where the claim is for possession of residential premises or **Form N11** in any other case) a list of local advice agencies, and notes for guidance for defendant (**Form N7**) where the premises are rented residential;
- serve the documents by post, or hand you back the copies if you are serving yourself.

Exceptionally, as described above, pass the papers to the bailiff for service with the stakes and envelopes you have provided.

Additional information

Service

The court will serve the claim form, particulars of claim, defence form and notes for guidance (where appropriate) by first class post, except where you say that you wish to serve the documents yourself.

Date of service

Where postal service is used, the date of service is deemed to be the second day after it was posted unless that day falls on a Saturday, Sunday, Bank Holiday, Christmas day, or Good Friday. In these cases the deemed date of service is the next working day. Personal service is effected on the day of handing to the defendant. (CPR Part 6)

Personal service and proof of service

Where a claim for possession against a tenant is served personally, it is a matter for you when this is done, but the claim form and particulars of claim must be served not less than 21 days before the date fixed for the hearing (Rule 55.5(3)). A certificate of service (in **Form N215** Certificate of service) must be produced at the hearing (Rule 55.8(6)) if the defendant does not file a defence, or appear at the hearing. The periods for service of claims against trespassers are set out in the paragraph below.

Target dates for hearings

For non-trespass cases, the date of hearing will normally take place not less than 28 days and no more than 8 weeks from the date of issue of the claim. (Rule 55.5 (3)) For claims against trespassers the court will give a hearing date as soon as possible allowing the defendants no less than 5 clear days notice, from service, where the claim involves residential premises, and no less than 2 clear days notice where it does not. (Rule 55.5 (2))

Abridging time for service and expediting hearing date

The court's case management powers under the CPR Part 3 provide for varying the time for compliance with any rule. You may wish to consider making an application of this kind, particularly in possession cases involving anti-social tenants where:

- the defendant or a person for whom the defendant is responsible, has assaulted, or threatened to assault;
- the claimant;
- a member of the claimant's staff; or another resident in the locality;
- there are reasonable grounds for fearing such assault; or
- the defendant, or a person for whom the defendant is responsible, has caused serious damage or threatened to cause serious damage to the property or to the home or property of another resident in the locality.

If these matters are alleged in the particulars of claim, the court will give particular consideration to exercising its powers under Rule 3.2 (1) (a) and (b). You must, however, **submit the appropriate** application notice when you issue the claim and support your application with evidence to justify your request. It would help the court, and save delay in issuing your claim, if, with your application notice, you produce a draft of the order you are asking the court to make. The application may be made without giving notice to the defendant. If the order is granted a copy of the order must be served on the defendant with the claim form and other documents.

2. Defendant's Response (Forms N11R or N11)

When a defence is filed by a defendant, the court will send you a copy.

For non-trepass claims

A defendant has 14 days after the date of service of the claim form and particulars of claim to file a defence but, in practice, can do so at any time before, or even at, the hearing. A defendant who does not file a defence in time, or at all, may still take part in the hearing, but the court may take this failure into account when deciding any order for costs. (Rule 55.7(3))

When a defendant files a response admitting your claim for possession (and any arrears), you must still attend the hearing to obtain an order for possession (and an order for payment of arrears). You cannot ask the court to enter judgment on acceptance of the admission prior to the hearing.

OR

For trespass claims

In a claim against trespassers, the defendant is not required to file a defence. The defendant may, however, attend the hearing and defend the claim. (Rule 55.7(2))

3. The Hearing (and evidence)

Rent possession cases are usually heard in private by a circuit or district judge. Claims against trespassers are usually heard in public. (See the practice direction to CPR Part 39)

> If you have served the claim form and other documents yourself, and the defendant has not replied to the claim and does not attend the hearing, you must prove service by producing a certificate of service in **Form N215**.

At the hearing, or any later hearing following adjournment of the initial hearing, the judge may either decide the claim or give case management directions. Case management directions may include allocation of the claim to a track. (Rule 55.9) Where the claim is genuinely disputed by the defendant on grounds that appear to be substantial, it **will** be allocated to a track. (CPR 55.8(2))

If you have witnesses, except where the claim has been allocated to the fast track or multi-track, or the court orders otherwise, they do not have to attend court to give evidence. They may give their evidence in the form of a witness statement (Rule 55.8(3)). CPR Part 32 deals with evidence and the form a witness statement should take. However, if the maker of the witness statement does not attend the hearing and the other party disputes material evidence contained in the statement, the court will normally adjourn the hearing so that oral evidence may be given.(see the practice direction to Part 55)

For non-trespass claims

All witness statements must be filed and served at least 2 days before the hearing. (Rule 55.8(4))

For trespass claims

In the case of a claim against trespassers, your witness statements must be served with the claim form. (Rule 55.9(5))

If you have witnesses attending the hearing, there are 3 information leaflets available free of charge from any county court which they may find helpful:

- The **court's information leaflet** giving its location, details of how to get there and the facilities it has;
- **'I have been asked to be a witness - what do I do?'** which tells witnesses what to expect when they come to court, how to address the judge, and so on; and
- **'Coming to a court hearing? Some things you should know.'** which includes information about who they should report to on arrival at court and how a hearing is conducted.

Court staff will prepare copies of any order made at the hearing and will send copies to both you and the defendant.

Allocation

If the judge decides that there is a defence which is likely to be substantial and decides to allocate the claim to a track, the matters that the judge will have regard to include:

- the matters set out in Rule 26.8 (matters to be considered on allocation as modified by the practice direction to Part 55);
- the amount of any arrears of rent;
- the importance to the defendant of retaining possession of the land; and
- the importance of vacant possession to the claimant.

The claim will not be allocated to the small claims track unless all parties consent. Similarly the court will not order that Rule 27.4 (costs on the small claims track) will apply unless all parties consent.

Where a claim is allocated to the small claims track, and there is no consent that small claims costs shall apply, the claim will be treated for the purpose of costs, as if it were proceeding in the fast track, except that trial costs shall be in the discretion of the judge and will not exceed the amount recoverable under Rule 46.2 (which sets out the costs allowed for fast track trials) if the value of the claim were an amount up to £3,000. The court can allocate a claim to the fast track dispite the fact that the value of the property exceeds £15,000.

4. Warrants of Possession

If the defendant fails to leave the property or land on the date specified, or fails to make payments in accordance with a suspended possession order, you may ask the court to issue a warrant of possession (Schedule 2 of the CPR, County Court Rules, Order 26 rule 17)

Requirements

Form N325 request to issue a warrant of possession

You are entitled to request execution against a defendant's goods (as well as possession) in respect of any judgment obtained (County Court Rules, Order 26 rule 17(3)).

The court fee

The Information Commissioner, who is responsible for the Data Protection legislation, has confirmed that it is reasonable for a creditor to take all lawful steps to trace and communicate with someone who owes them money ***and to be able to pass this information on*** *when the debt is being pursued* ***on their behalf by a county court bailiff.*** *Such information will include contact information, for example, land line and mobile telephone numbers, and whether the debtor is employed and works shifts, but* **not** *the name and address of his employer since contact by the bailiff at an individual's place of employment is usually only allowed subject to an order of the court.*

It is also vital that you provide the bailiff with any information you have which suggests they may need the help of another bailiff, or the police, for their own protection and that of your representative attending the eviction. Please read the section headed 'Anti-social behaviour and health and safety issues', in the introduction to this booklet. Any information relevant to that section should be included in your request to issue the warrat, or in an accompanying letter, suitably highlighted.

Checks

You should check that:

- the request form is fully completed and signed (and information about goods which can be levied upon (if appropriate), any contact details, or information about potential violence, included on the form, or set out in an accompanying letter, suitably highlighted)
- you are sending it to the correct court
- you have submitted the correct fee
- the correct solicitor's costs, if any, are claimed

Where you have obtained **an order against trespassers**, you may, if you wish, apply to have the order transferred to the High Court for execution by the Sheriff for the County. The procedure is set out in Schedule 2 of the Civil Procedure Rules, County Court, Order 25 Rule 8. You will need to complete section 1 of **Form N293A** which is a combined certificate of judgment and request to issue a writ of possession.

Staff at the county court where you obtained your order will complete the rest of the form. You should then follow the instructions endorsed on the certificate by filing it with the necessary papers at a district registry or at Central Office in the Royal Courts of Justice. There is no fee for the certificate or for registering the order with the High Court. You will have to pay a fee to issue the writ of possession and the Sheriff's fees for dealing with the writ.

Court procedures

Court staff will:

- allocate a warrant number and endorse it on your schedule
- draw up a warrant in **Form N49** and pass it to the bailiff

The bailiff will:

- fix a date and time for the eviction
- send you **Form EX96** Notice of the appointment

You **must** confirm you will attend the eviction appointment. If you do not, the eviction may **not** take place.

- make a preliminary visit to the property to:
  - notify the defendant of the eviction date and time
  - evaluate the potential for violence
  - establish whether there are any children, sick or elderly people, or animals that may need assistance from welfare services or the RSPCA
  - levy, if the warrant includes a claim for money

The defendant will be given **Form N54** Notice of eviction. The form tells the defendant to contact you direct if they can pay off all, or some, of the arrears. It will be for you to decide whether any payment is sufficient for you to ask the court to suspend or withdraw the possession warrant. **You must let the court, or bailiff, know immediately if you come to any agreement with the defendant that will make the eviction date unnecessary.**

In some cases, the defendant may be able to apply to the court for the possession warrant to be suspended. If the court receives an application, you will be sent a copy of it endorsed with a hearing date. If the defendant's application is successful, the court will draw an order setting out details of the suspension and any terms attached to it.

If the application fails, the warrant will be returned to the bailiff for execution. A further eviction date will be set. You may wish to consider, although it is not a legal requirement, telling defendants when you intend to issue a possession warrant. If they are forewarned it may prevent an application to suspend the warrant being made very close to the eviction date.

On the date fixed for the eviction

Make sure you have arranged for a locksmith to attend the eviction to secure the premises against re-entry. Where there is a risk of violence, the bailiff may have arranged a police presence. Police do not normally intervene in the eviction process, but will usually stand by to prevent any breach of the peace.

Once the bailiff has entered the premises and evicted everyone in them, the bailiff will ask you to sign the warrant acknowledging receipt of possession.

It is the defendants' responsibility to remove their goods from the property before the eviction takes place. The bailiff will only remove goods that are subject to a levy. If any of the defendants' goods remain on the property once you have acknowledged receipt of possession, it will be for you to decide whether you are willing to allow the defendant back into the property to remove them.

Life of a warrant

A warrant of possession that is not executed remains valid for a period of 12 months from the date of issue. (Schedule 2 of the Civil Procedure Rules, County Court Rules, Order 26, rules 6(1) & 17(6))

Renewal

A warrant may be renewed for a further period of 12 months (beginning the day after the expiry date). An application for renewal should normally be made before the warrant expires, although the court does have discretion to allow renewal after this time.

Reissue

A warrant that has been suspended, may be re-issued any time within the twelve month period of the date of issue or of any period of renewal. You may find that some courts require proof that no payment of arrears and costs has been made since the possession order was made before they are prepared to re-issue the warrant.

5. Interim Injunctions

CPR Part 25 deals with interim remedies which includes injunctions. An application for an injunction to protect your staff, tenants, and witnesses can be made:

- before you issue your claim;
- after issue, but before the possession hearing; and
- at, or after the possession hearing.

All applications must be accompanied by either sworn evidence or evidence supported by a statement of truth.

If your application is made before the claim is issued, you will normally be asked by the court to confirm that the court has jurisdiction to deal with your case and to give an undertaking to issue a claim within a specified time.

You should give the court early warning that you intend to apply for an injunction so that arrangements can be made for a judge to be available. ***Do not wait*** *until you have all the papers in order.*

- Your application should be made in **Form N16A**. It should be accompanied by evidence in which the grounds for making the application are set out;
- You should also prepare a draft injunction order in **Form N16**;
- The application may be made with or without notice. In cases of extreme urgency, an application may be made by telephone. (see paragraph 4.2 of the practice direction to CPR Part 25)

Where your application is made **with** notice you must serve the application on the respondent personally not less than 2 days before the date of hearing (Schedule 2 of the Civil Procedure Rules, County Court, Order 49, rule 6B (3)). Where it is sought without notice, your evidence must include your reasons for suggesting notice should not be given.

Make sure you bring sufficient copies of all the documents for the court to seal for service on the respondent/defendant once the order is made whether or not you intend to serve them yourself.

If the judge grants your application for an interim injunction, a date will be allocated for the substantive hearing of the application. At that hearing, the court will consider whether or not the injunction should continue, be varied or dismissed. The respondent/defendant must be served personally with the application, evidence and any order (including the further hearing date) made by the court, without delay (Schedule 2, Civil Procedure Rules, County Court, Order 49, rule 6B(4)). The respondent/defendant will have the opportunity to make representations at that hearing.

6. Injunctions under the Housing Act 1996

Section 152 of the Housing Act 1996 gives the High Court or a county court the power to grant injunctions to local authorities against anti-social behaviour where the premises subject to the tenancy agreement are residential premises and the court is of the opinion that the person against whom the injunction is sought has:

- used violence, or threatened violence, to a person residing in or visiting or otherwise engaging in a lawful activity in the residential premises; and
- there is a significant risk of harm to any of those people if the injunction is not granted.

The procedure to be followed is set out on the previous page.

Power of arrest

Under section 153 of the Housing Act 1996, the court may attach a power of arrest to one or more of the provisions of any injunction granted to a local housing authority, a housing action trust, registered social landlord, or a charitable housing trust.

Where a power of arrest is attached to an injunction, you must deliver a copy of the injunction to the police officer for the time being in charge of the police station for the area where the conduct complained of took place. You must do this ***as soon as possible after you have served*** *a copy of the order on the respondent/defendant. Similarly, you must deliver a copy of any order varying or discharging that injunction.(Schedule 2 of the Civil Procedure Rules, CPR Order 49,rule 6B)*

Where a power of arrest is attached, the police may then, without a warrant, arrest the person where there has been a breach of any of the provisions of the injunction. The arrested person must be brought before a judge within 24 hours of being arrested. For the purpose of calculating the 24-hour period, Sundays, Christmas Day and Good Friday do not count.

Warrant of arrest

Section 155 of the Housing Act gives the courts two additional options: the option of issuing a warrant of arrest to have the respondent/defendant brought before the court, or where it cannot deal with the matter immediately, of remand, either in custody, or on bail.

If the court has granted an injunction to which a power of arrest was not attached, but the

injunction was one where a power of arrest might have been attached, or where a power of arrest was only attached to certain provisions, you may apply to the judge for the issue of a warrant of arrest. You should apply using **Form N244** Application notice. Your application notice must be accompanied by an affidavit setting out the grounds for your application. The application may be made without notice.

If your application is granted, a warrant of arrest in **Form N146** will be issued and passed to the bailiffs. When the person is arrested, they must be brought before a judge, usually, within 24 hours, as set out above.

Remand and bail

If the judge does not, or cannot, deal with a person in breach of an injunction immediately, the judge can remand that person either on bail, or in custody. An order will be drawn in **Form N148** Remand order (bail granted), or **Form N147** Remand order (bail not granted). Where the judge allows bail it will usually be subject to conditions. For example, a condition may be that the person attends a later hearing, another may be that that person or someone on his behalf (a surety) agrees to pay a sum of money set by the court as a recognizance (money they will forfeit if the person fails to attend the next hearing). The legislation **does not** allow a person in breach of bail conditions to be arrested automatically.

If a person is remanded on bail, that person is allowed to leave the court after being served with the remand and recognizance orders. A person arrested under a warrant of arrest may make an application for bail. This may be made orally, or in an application notice. You will be served with a copy of any written application.

A person remanded into custody may be held in prison, or in police custody until the next hearing. They may also be remanded into custody for a medical report to be prepared. Where a medical report is to be prepared, they may be either detained in hospital, or put into the care of a guardian. Orders in **Form N143** (Interim) hospital order or **Form N142** Guardianship order, will be drawn as appropriate.

Where you are seeking a interim or final hospital order, it is for you to establish the appropriate hospital for the court's information, and whether or not that hospital has a bed available for the person to be remanded.

7. Applications in the course of proceedings

CPR Part 23 contains general rules about applications for court orders. Applications may be made during the course of proceedings, that is, both before and after a judgment or order has been made. A form, N244 Application notice is available for this purpose but you may also make an application by letter (Rule 23.1) A fee is payable whether your application is made by notice or letter. You may also make an oral request at a hearing.

A copy of your application notice must be served on each respondent unless a rule, practice direction or court order permits an application to be made without notice. (Rule 23.4(2))

Applications are usually dealt with at a public court hearing. You will be given at least 3 clear days notice of the date. The court may deal with an application without a hearing if both parties agree to the order being sought, or that the court should deal with it without a hearing.

The most common types of applications are:

To abridge (shorten) the time for service in order to enable an expedited hearing

The claim and particulars of claim must be served on the defendant at least 21 days before the hearing date. You may make an application to shorten this time.

To discontinue the claim

You may discontinue your claim at any time before judgment or final order. However, you must obtain the court's permission if an interim order has been granted, or any party has given an undertaking to the court. (Rule 38.2(2))

Where you do not need the court's permission, you must file a written notice that you are discontinuing your claim and serve a copy on every other party to the proceedings. You will be liable for any costs the defendant has incurred. (Rule 38.6(1))

To adjourn the hearing

You may wish to apply for the hearing to be adjourned to another date. The court will not normally adjourn a claim indefinitely.

To strike out a statement of case

You may wish to invite the court to strike out the whole, or part, of any defence or counterclaim providing evidence that it discloses no reasonable defence or counterclaim and that there is no other reason the matter should be subject to trial.

To vary the terms of an order for payment

A defendant may apply to vary the terms of an order for payment at any time after an order is made.

If you do not oppose the defendant's proposal, you can write to the court indicating your consent. You do not need to attend the hearing if you do this.

If you are approached by the defendant informally with a request to vary repayments, it is a matter for you whether or not you agree to what is proposed. If you refuse, it is still open to the defendant to make a formal application to the court.

To suspend the execution of a possession warrant

A defendant may apply to suspend a warrant of possession and execution at any time after issue of the warrant and before eviction.

The rules are silent on the grounds on which an application can be made and set no limit on the number of successive applications. It is for the court to decide whether or not to:

- allow successive applications where the terms of the previous suspension have not been adhered to;
- impose a ban on further applications or apply a permission requirement before further applications can be made.

You may consider asking for such orders, or that any subsequent applications for suspension are reserved to the same judge.

If you agree to suspend a warrant of possession following agreement with the defendant as to repayment, you may find your request to suspend handled differently in different courts. In some courts, your request will be treated as having withdrawn the warrant and it will not be reissued. That is, if you subsequently wish to proceed with enforcement you will have to issue a new warrant. In these courts, a warrant is only treated as suspended and capable of re-issue following formal application (by consent is acceptable) and judicial order. Where this practice exists, you may make written representations to the judge if you object. Court staff will refer your letter to the judge for directions.